

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION**

BRENT NIX, individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

THE CHEMOURS COMPANY FC, LLC,  
THE CHEMOURS COMPANY, E.I.  
DUPONT de NEMOURS AND  
COMPANY, INC., E.I. DUPONT  
CHEMICAL CORPORATION, ELLIS H.  
MCGAUGHY, and MICHAEL E.  
JOHNSON,

Defendants.

Case No.: 7:17-CV-00189-D

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CAPE FEAR PUBLIC UTILITY  
AUTHORITY,

Plaintiff,

v.

THE CHEMOURS COMPANY FC, LLC,  
and E.I. DU PONT de NEMOURS AND  
COMPANY,

Defendants.

Case No.: 7:17-CV-00195-D

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**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF  
JOINT MOTION FOR A STATUS CONFERENCE**

ROGER MORTON, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

THE CHEMOURS COMPANY FC, LLC,  
THE CHEMOURS COMPANY, E.I.  
DUPONT de NEMOURS AND COMPANY,  
INC., E.I. DUPONT CHEMICAL  
CORPORATION, ELLIS H. MCGAUGHY,  
and MICHAEL E. JOHNSON,

Defendants.

Case No.: 7:17-CV-00197-D

VICTORIA CAREY, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

E. I. DU PONT DE NEMOURS AND  
COMPANY and THE CHEMOURS  
COMPANY FC, LLC,

Defendants.

Case No.: 7:17-CV-00201-D

BRUNSWICK COUNTY, a  
governmental entity;

Plaintiff,

v.

DOWDUPONT, INC., a Delaware corporation;  
E.I. DU PONT DE NEMOURS AND  
COMPANY, a business entity form unknown;  
THE CHEMOURS COMPANY, a Delaware  
corporation; THE CHEMOURS COMPANY  
FC, LLC, a Delaware limited liability  
company; and DOES 1 to 25,

Defendants.

Case No.: 7:17-CV-00209-BO

Pursuant to Rule 16(a), plaintiffs Victoria Carey, Brent Nix, Roger Morton, Cape Fear Public Utility Authority, and Brunswick County jointly move for an order scheduling a pretrial status conference. Because these cases all involve essentially the same facts and claims, and discovery and motions will be substantially the same for each case, plaintiffs believe a coordinated briefing and discovery schedule applicable to all five pending cases would be appropriate. Plaintiffs are requesting a status conference in order to obtain guidance from the Court regarding how the Court would prefer to proceed.

### STATEMENT OF FACTS

Currently pending before this Court are three class actions and two actions brought by public entities that supply drinking water to the public. Each of these cases addresses the harm resulting from defendants E.I. du Pont de Nemours and Company (“DuPont”) and its former subsidiary, The Chemours Company FC, LLC (“Chemours”), having discharged, over a period of more than three decades, polyfluorinated substances (“PFASs”) such as perfluorooctanoic acids (“PFOAs”), perfluorooctane sulfonate (“PFOS”), GenX, and Nafion into the Cape Fear River, all the while concealing their conduct and its dangerous effects on human health and life. Defendants have filed a motion to dismiss the *Nix* class action, but have obtained extensions of their time to answer or otherwise respond to the complaints in each of the other actions.

While the class actions are brought on behalf of citizens and businesses who have consumed and used the contaminated water and the public entities are suing for their own damages sustained as they work to supply safe water to their customers, the plaintiffs are all asserting similar – although not identical – claims for public and private nuisance, trespass, and negligence. Discovery in these cases will, therefore, substantially overlap, as will the issues addressed in dispositive motions.

## ARGUMENT

“Federal Rule of Civil Procedure 16 vests the district court with early control over cases ‘toward a process of judicial management that embraces the entire pretrial phase, especially motions and discovery.’” *In re Arizona*, 528 F.3d 652, 657 (9th Cir.), *cert. denied*, 129 S. Ct. 2852, 174 L. Ed. 2d 551 (2009) (quoting Fed. R. Civ. P. 16 advisory committee’s note, 1983 Amendment). The rule notes that the “[p]urposes of a [p]retorial [c]onference” can include “establishing early and continuing control so that the case will not be protracted because of lack of management[.]” and “discouraging wasteful pretrial activities[.]” Fed. R. Civ. P. 16(a)(2), (3). Rule 16 “contemplates that a trial court should assume an ‘active managerial role’ in the litigation process to expedite the efficient disposition of a case.” *Lassiter v. City of Philadelphia*, 716 F.3d 53, 55 (3d Cir. 2013), *cert. denied*, 134 S. Ct. 902, 187 L. Ed. 2d 777 (2014) (quoting *Phillips v. Allegheny Cnty.*, 869 F.2d 234, 239 (3d Cir. 1989)).

Plaintiffs believe the Court may wish to consider entering a case management order applicable to all five pending actions that coordinates motion practice and discovery for those five cases. With respect to the class actions, the plaintiffs would propose that they file a Consolidated Amended Complaint. As for Cape Fear Public Utility and Brunswick County, a Consolidated Amended Complaint may not be necessary unless it would be helpful to the Court. Plaintiffs would also appreciate guidance from the Court regarding establishment of a briefing schedule for motions to dismiss and the Court’s preferences with respect to how discovery should proceed.

Early court intervention in the case management of this multiparty case involving over three decades of contamination may well prove essential to insuring judicial economy and to avoiding unnecessary delay and confusion from differing schedules and each party’s pursuing discovery on its own. Plaintiffs believe that it should be possible to minimize duplication of

discovery and briefing in the five actions. Plaintiffs do not, however, believe it is necessary or appropriate to entirely defer discovery until after the motions to dismiss are decided. Plaintiffs, therefore, suggest that the timing of discovery is another issue which could be addressed in an initial status conference, along with any matters the Court wishes to raise with the parties. In order to facilitate entry of a case management order applying to all five pending actions, plaintiffs respectfully request that the Court stay all current deadlines pending the status conference.

Plaintiffs have consulted with counsel for defendants regarding this motion and defense counsel have indicated that they do not consent to the scheduling of a pretrial status conference prior to the filing of any Consolidated Amended Complaint.

#### CONCLUSION

For all the foregoing reasons, plaintiffs respectfully request that the Court schedule an initial pretrial status conference in all five cases pending before it and that the Court stay all current deadlines pending that conference.

Dated: November 29, 2017

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 29, 2017, I electronically filed the PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF JOINT MOTION FOR A STATUS CONFERENCE with the Clerk of the Court using the ECF who in turn served it on all counsel or parties of record on the Service List below, and served the forgoing notice on the following by placing a copy of the same in the United States Mail, first class postage prepaid, addressed as follows:

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